

ARKANSAS COURT OF APPEALSDIVISION IV
No. CA 08-353HILL & HILL CONSTRUCTION CO.,
INC. and AIG CLAIM SERVICES INC.
APPELLANTS

V.

BOBBY PRITCHETT

APPELLEE

Opinion Delivered OCTOBER 1, 2008APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION,
[NO. F507177]

AFFIRMED

JOHN B. ROBBINS, Judge

Appellee Bobby Pritchett suffered an accidental fall while working for appellant Hill & Hill Construction on April 22, 2005, causing Mr. Pritchett to strike the ground in a kneeling position. The appellant accepted compensability for a left knee injury and paid for benefits that included arthroscopic surgery performed on January 7, 2006, by Dr. William Barr. However, the appellant controverted Mr. Pritchett's claim that he also sustained a compensable aggravation to his right knee. After a hearing, the Workers' Compensation Commission found that Mr. Pritchett proved that he sustained a compensable injury to his right knee and awarded medical benefits to include arthroscopic surgery to that knee as recommended by Dr. Barr. In this appeal, Hill & Hill Construction argues that substantial evidence does not support the Commission's finding that Mr. Pritchett suffered a compensable aggravation to his right knee. We affirm.

In Workers' Compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation is a new injury resulting from an independent incident, and an aggravation of a preexisting noncompensable condition is, itself, compensable. *Id.* In appeals involving claims for workers' compensation, we review the evidence in a light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Engle v. Thompson Murray, Inc.*, 96 Ark. App. 200, 239 S.W.3d 561 (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.*

Appellee's wife, Emma Pritchett, testified first at the hearing. She recalled that Mr. Pritchett had previously undergone arthroscopic right-knee surgery in 1996. She stated that Mr. Pritchett also has arthritis in both knees and has had a series of four or five cortisone shots over the years. Ms. Pritchett recalled that the accident occurred on Friday, April 22, 2005, and that she took her husband to see Dr. Barr on the following Tuesday.

Ms. Pritchett explained that after Dr. Barr ordered MRIs and x-rays, he recommended surgery for both knees. The initial plan was to operate first on the right knee, but after Mr. Pritchett complained of increasing left-knee pain, Dr. Barr performed surgery on that

knee. Mr. Pritchett is still awaiting arthroscopic surgery for his right knee as a result of the appellant's controversion of his claim.

Ms. Pritchett indicated that after the incident on April 22, 2005, her husband continued to work but was in pain. She maintained that he has been in much more pain after the accident than before. Ms. Pritchett further stated that while there was preexisting grinding in appellee's right knee, he now experiences popping. She also testified that Mr. Pritchett currently has severe swelling in his knees that was not present before, causing him to take Epsom Salt baths and apply ice packs.

Mr. Pritchett testified that he is fifty-two years old and has been employed by Hill & Hill for thirty-two years. His duties include mechanic work and operating heavy equipment. According to Mr. Pritchett, he can no longer operate heavy equipment because of the accident causing his problems with both legs, and he has been reassigned to a supervisory position. He described the accident as follows:

In this accident on April 22nd, '05, Larry Hill and I were putting a track on a D8 dozer. We put the track on, got that pry bar and chains hooked on both sides and pried down. I got up on some blocks so I could catch the bar and pull down, we had the bar inside the pipe. I was pulling down, and it flipped and the pipe went on my legs. I went down on my knees and I hit it on the ground. My legs landed on the block, I hit my butt and my knees hit the ground. My legs landed under me. My legs burned like fire, both of them. Frazier and Hill were there when this happened and they saw it happen. When I got up I tried to walk it off. I was rolling on the ground and rubbing my legs, rubbed my knees and stretched my knees out, finally got up and tried to walk it off. Both my knees were hurting. This one hurt both. It hurt them so bad I could hardly take it.

Mr. Pritchett testified that "both of my knees burned like fire and swelled up over the weekend," that "it hurt worse than it's ever hurt," and that "this was nothing like anything

in the past.” Mr. Pritchett acknowledged preexisting arthritis in his right knee for which he had been prescribed the anti-inflammatory drug Vioxx, but indicated that this was relatively minor compared to the constant leg pain he now experiences.

The pertinent medical evidence in this case was provided in large part by appellee’s treating physician, Dr. Barr. More than a year before the accident at issue in this case, Dr. Barr reported on February 10, 2004, that Mr. Pritchett was involved in a twisting incident. This resulted in a diagnosis of a strain to both knees, and Dr. Barr also reported that Mr. Pritchett had preexisting moderate osteoarthritis in both knees, greater in the right knee than the left.

Dr. Barr’s medical report dated April 26, 2005, documented the work-related accident of April 22, 2005. In that report he noted that he had not seen Mr. Pritchett since February 2004. The initial diagnosis was “strain on both knees with traumatic exacerbation of osteoarthritis and probable gout in both knees.” On November 28, 2005, Dr. Barr reported that an MRI of the right knee “shows a tear of the posterior horn of the medial meniscus and of course there is osteoarthritis in the knee.” In that report, Dr. Barr gave the opinion that they needed to proceed with an arthroscopy of the right knee. Dr. Barr diagnosed a similar condition in appellee’s left knee, which was surgically repaired. On July 31, 2006, Dr. Barr’s assessment was “tear posterior horn medial meniscus right knee” as well as “tricompartamental osteoarthritis preexisting this particular injury.” At that time Dr. Barr stated, “He really needs to proceed with the right knee as he did with the left knee.”

Dr. Terence Braden conducted an independent medical evaluation on July 13, 2006.

After reviewing the medical records and examining Mr. Pritchett, Dr. Braden made the following conclusions:

1. Mr. Bobby Pritchett is a 51-year-old male who reports to have sustained an injury on 04/22/2005. He had subsequent knee pain, injections into both knees, arthroscopic surgery with removal of the medial and lateral meniscus of the left knee.
2. He has reached maximum medical improvement from the injury that he reports to have sustained.
3. The major cause and need for his ongoing treatment is from the severe degenerative joint disease that preceded his injury.
.....
5. The right knee with its previous significant degenerative changes and operative intervention is a pre-existing problem.

Dr. Braden stated that his conclusions were within a reasonable degree of medical certainty.

Hill & Hill Construction argues on appeal that there is no substantial evidence to support the Commission's finding that Mr. Pritchett suffered a compensable right knee injury. The appellant submits that the right knee condition is preexisting and that the need for surgery, if any, is not causally related to the April 22, 2005, fall at work. The appellant notes that Mr. Pritchett has had ongoing right knee problems since 1996, and submits that his problems are of a degenerative nature. In support of its argument, appellant relies on Dr. Braden's opinion, which was that the major cause and need for Mr. Pritchett's ongoing treatment was from his severe degenerative joint disease that preceded the injury. Dr. Braden concluded that Mr. Pritchett's right knee problems were preexisting.

We hold that substantial evidence supports the Commission's decision. We note that because Mr. Pritchett is only currently seeking temporary benefits for his compensable injury,

there is no requirement that he prove that the compensable injury was the major cause of the need for surgery. See *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). The issue of whether Mr. Pritchett sustained a work-related compensable aggravation turns primarily on the resolution of the conflicting medical opinions, which is a duty for the Commission. See *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001). In this case the Commission credited the opinion of appellee's primary treating physician, Dr. Barr, over that of Dr. Braden.

There was no medical documentation of a meniscus tear in appellee's knee before he suffered the fall at work, and while Mr. Pritchett undoubtedly had preexisting moderate arthritis, Dr. Barr's reports indicated that the need for surgery resulted from the traumatic exacerbation of Mr. Pritchett's knee condition. Significantly, there was no recommendation of arthroscopic surgery until after the work-related accident. The last medical report before the accident was more than a year earlier in February 2004, and it documented only strain and arthritis. Both Mr. Pritchett and his wife testified that his right knee symptoms worsened considerably after the fall, including increased swelling, popping, and constant pain.

In light of this supporting evidence, we affirm the Commission's findings that Mr. Pritchett established a compensable aggravation to his right knee for which he is entitled to reasonably necessary medical treatment, including arthroscopic surgery.

Affirmed.

GLADWIN and BIRD, JJ., agree.